

AMENDED IN SENATE APRIL 26, 2004

**SENATE BILL**

**No. 1817**

**Introduced by Senators Scott and Alpert**  
(Coauthors: Assembly Members Daucher and Liu)

February 20, 2004

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An act to amend ~~Sections 70901, 70902, 71090, and 71092 of, to amend, repeal, and add Section 70901.5~~ *Section 71090* of, and to repeal Section 71090.5 of, the Education Code, relating to higher education governance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1817, as amended, Scott. Higher education governance: community colleges.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of local community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state. *Existing law authorizes the board of governors to appoint a chief executive officer, known as the Chancellor of the California Community Colleges, and to fix his or her compensation.*

This bill would ~~generally recast and revise the statutes relating to the organization, mission, and responsibilities of the Board of Governors of the California Community Colleges, the Chancellor of the California Community Colleges, and community college district governing boards. Among other things, the bill would, until January 1, 2010, provide that the operation of a regulation proposed by the board of~~

~~governors may be suspended by a vote of at least 1/2 of the community college district governing boards in the state.~~

~~The bill would also authorize the board of governors, rather than the Commission on State Mandates, to review regulations affecting community college districts to determine whether these regulations constitute reimbursable state mandates under the California Constitution~~ *express the intent of the Legislature to enact legislation granting authority to the board of governors to appoint up to 6 deputy and vice chancellors if and when an amendment to the California Constitution, authorizing these appointments, is adopted.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1    ~~SECTION 1. Section 70901 of the Education Code is~~  
2    ~~amended to read:~~

3    ~~70901. (a) The Board of Governors of the California~~  
4    ~~Community Colleges shall provide leadership and direction in the~~  
5    ~~continuing development of the California Community Colleges as~~  
6    ~~an integral and effective element in the structure of public higher~~  
7    ~~education in the state. The work of the board of governors shall at~~  
8    ~~all times be directed to maintaining and continuing, to the~~  
9    ~~maximum degree permissible, local authority and control in the~~  
10    ~~administration of the districts and colleges.~~

11    ~~(b) Subject to, and in furtherance of, subdivision (a), and in~~  
12    ~~consultation with community college districts and other interested~~  
13    ~~parties as specified in subdivision (e), the board of governors shall~~  
14    ~~provide general supervision over community college districts,~~  
15    ~~shall focus on maintaining and continuing the integrity of, and~~  
16    ~~accessibility to, the system and on securing the resources needed~~  
17    ~~for the system to be responsible to the full range of community~~  
18    ~~college student needs, and shall, in furtherance thereof, perform~~  
19    ~~the following functions:~~

20    ~~(1) Establish minimum conditions for all districts to receive~~  
21    ~~state support and to function within the system and minimum~~  
22    ~~standards as required by law, including, but not necessarily limited~~  
23    ~~to, all of the following:~~



1     ~~(A) Minimum standards to govern student academic standards~~  
2 ~~relating to graduation requirements and probation, dismissal, and~~  
3 ~~readmission policies.~~

4     ~~(B) Minimum employment standards for academic and~~  
5 ~~administrative staff.~~

6     ~~(C) Minimum standards for the formation of new community~~  
7 ~~colleges and districts and the reorganization of existing~~  
8 ~~community college districts, including the approval and~~  
9 ~~disapproval of plans therefor.~~

10    ~~(D) Minimum standards for credit and noncredit classes.~~

11    ~~(E) Minimum standards governing procedures established by~~  
12 ~~governing boards of community college districts to ensure faculty,~~  
13 ~~staff, and students the right to participate effectively in district and~~  
14 ~~college governance, and the opportunity to express their opinions~~  
15 ~~at the campus level and to ensure that these opinions are given~~  
16 ~~every reasonable consideration, and the right of academic senates~~  
17 ~~to assume primary responsibility for making recommendations in~~  
18 ~~the areas of curriculum and academic standards.~~

19    ~~(2) Evaluate and issue annual reports on the fiscal and~~  
20 ~~educational effectiveness of community college districts and~~  
21 ~~provide assistance when districts encounter severe management~~  
22 ~~difficulties.~~

23    ~~(3) Conduct systemwide research , planning , and~~  
24 ~~dissemination of information.~~

25    ~~(4) Provide representation, advocacy, and accountability for~~  
26 ~~the California Community Colleges before state and national~~  
27 ~~legislative and executive agencies.~~

28    ~~(5) Administer state operational and capital outlay support~~  
29 ~~programs.~~

30    ~~(6) Adopt a proposed system budget and allocation process.~~  
31 ~~The proposed budget shall, at a minimum, include the student fee~~  
32 ~~level deemed to be necessary by the board of governors.~~

33    ~~(7) In collaboration with the Trustees of the California State~~  
34 ~~University, and the Regents of the University of California, and the~~  
35 ~~faculty of each segment develop articulation and transfer~~  
36 ~~processes so that students who so desire shall have clear pathways~~  
37 ~~to transfer and degree obtainment.~~

38    ~~(8) Review and approve programs of instruction that lead to~~  
39 ~~certificates, degrees, or transfer eligibility.~~

~~(9) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.~~

~~(10) Carry out other functions as expressly provided by law.~~

~~(e) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.~~

~~(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.~~

~~(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.~~

~~SEC. 2. Section 70901.5 of the Education Code is amended to read:~~

~~70901.5. (a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:~~

~~(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 45 days after adoption.~~

~~(2) The proposed regulations shall be accompanied by a determination of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies. The board of governors shall use the consultation procedures established pursuant to subdivision (e) of Section 70901 in developing the determination, which shall be prepared in accordance with instructions adopted by the Department of Finance.~~

~~(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of “necessity,” “authority,” “clarity,” “consistency,” “reference,” and “nonduplication,” as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.~~

~~(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.~~

~~(5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved under this paragraph, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:~~

~~(A) Reject or withdraw the regulation.~~

~~(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly adopted regulation, and shall go into effect in accordance with those procedures.~~

~~(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. This option cannot be exercised by the board of governors to overcome the disapproval~~

1 of a regulation on the basis that it creates a new mandate that has  
2 not been funded. If the board of governors decides to readopt a  
3 regulation, with or without technical amendments, it shall also  
4 adopt a written declaration and determination regarding the  
5 specific state interests it has found necessary to protect by means  
6 of the specific language or requirements of the regulation. A  
7 readopted regulation may then be challenged pursuant to existing  
8 law in a court of competent jurisdiction, and shall not be subject  
9 to any further appeal within the California Community Colleges.

10 (6) The effective date for a regulation shall be suspended if,  
11 within 45 days after adoption by the board of governors, at least  
12 one-half of all governing boards vote, in open session, to  
13 disapprove the regulation on the basis that it creates a new  
14 unfunded state mandate, adopt a written declaration specifying the  
15 mandated cost resulting from the proposed regulation, and notify  
16 the board of governors about these actions in writing. With respect  
17 to any regulation so disapproved under this paragraph, the board  
18 of governors shall provide at least 45 additional days for review,  
19 comment, and hearing, including at least one hearing before the  
20 board itself. After the additional period of review, comment, and  
21 hearing, the board may do either of the following:

22 (A) Reject or withdraw the regulation.

23 (B) Substantially amend the regulation to address the concerns  
24 raised during the additional review period, and then adopt the  
25 revised regulation. The regulation shall be treated as a newly  
26 adopted regulation, and shall go into effect in accordance with  
27 those procedures.

28 (7) It is the intent of the Legislature to appropriate in the annual  
29 Budget Act funds for the purpose of offsetting net cumulative costs  
30 of regulations adopted by the board pursuant to this division. The  
31 board may consider the net cumulative cost or savings to local  
32 districts of regulations proposed in a fiscal year. As to any  
33 regulation that the board of governors determines would create a  
34 state-mandated local program cost, the board of governors shall  
35 not adopt the regulation until the Department of Finance has  
36 certified to the board of governors and to the Legislature that a  
37 source of funds is available to reimburse that cost.

38 (8) Pursuant to Section 6 of Article XIII B of the California  
39 Constitution, a subvention of funds need not be provided for the  
40 following mandates: (A) mandates requested by the local agency

1 affected; or (B) mandates enacted prior to January 1, 1975, or  
 2 executive orders or regulations initially implementing legislation  
 3 enacted prior to January 1, 1975. Notwithstanding Chapter 4  
 4 (commencing with Section 17550) of Part 7 of Division 4 of Title  
 5 2 of the Government Code, the action of the board of governors  
 6 regarding regulations adopted pursuant to this section or pursuant  
 7 to these exceptions shall not be subject to review by the  
 8 Commission on State Mandates. In exercising this responsibility,  
 9 the board shall make its determinations in conformance with  
 10 Section 17556 of the Government Code and in a manner consistent  
 11 with the rules, standards, and precedential decisions of the  
 12 Commission on State Mandates.

13 (9) Any district or other interested party may propose a new  
 14 regulation or challenge any existing regulation.

15 (b) Except as expressly provided by this section, and except as  
 16 provided by resolution of the board of governors, the provisions  
 17 of Chapter 3.5 (commencing with Section 11340) of Part 1 of  
 18 Division 3 of Title 2 of the Government Code shall not apply to  
 19 regulations adopted by the board of governors.

20 (c) This section shall remain in effect only until January 1,  
 21 2010, and as of that date is repealed, unless a later enacted statute,  
 22 that is enacted before January 1, 2010, deletes or extends that date.

23 SEC. 3. Section 70901.5 is added to the Education Code, to  
 24 read:

25 70901.5. (a) The board of governors shall establish  
 26 procedures for the adoption of rules and regulations governing the  
 27 California Community Colleges. Among other matters, the  
 28 procedures shall implement the following requirements:

29 (1) Written notice of a proposed action shall be provided to  
 30 each community college district and to all other interested parties  
 31 and individuals, including the educational policy and fiscal  
 32 committees of the Legislature and the Department of Finance at  
 33 least 45 days in advance. The regulations shall become effective  
 34 no earlier than 45 days after adoption.

35 (2) The proposed regulations shall be accompanied by a  
 36 determination of the effect of the proposed regulations with regard  
 37 to the costs or savings to any state agency, the cost of any  
 38 state mandated local program as governed by Part 7 (commencing  
 39 with Section 17500) of Division 4 of Title 2 of the Government  
 40 Code, or any other costs or savings of local agencies and the costs



1 or savings in federal funding provided to state agencies. The board  
2 of governors shall use the consultation procedures established  
3 pursuant to subdivision (c) of Section 70901 in developing the  
4 determination, which shall be prepared in accordance with  
5 instructions adopted by the Department of Finance.

6 (3) The board of governors shall ensure that all proposed  
7 regulations of the board meet the standards of “necessity,”  
8 “authority,” “clarity,” “consistency,” “reference,” and  
9 “nonduplication,” as those items are defined in Section 11349 of  
10 the Government Code. A district governing board or any other  
11 interested party may challenge any proposed regulatory action  
12 regarding the application of these standards.

13 (4) Prior to the adoption of regulations, the board of governors  
14 shall consider and respond to all written and oral comments  
15 received during the comment period.

16 (5) The effective date for a regulation shall be suspended if,  
17 within 30 days after adoption by the board of governors, at least  
18 two-thirds of all governing boards vote, in open session, to  
19 disapprove the regulation. With respect to any regulation so  
20 disapproved under this paragraph, the board of governors shall  
21 provide at least 45 additional days for review, comment, and  
22 hearing, including at least one hearing before the board itself.  
23 After the additional period of review, comment, and hearing, the  
24 board may do any of the following:

25 (A) Reject or withdraw the regulation.

26 (B) Substantially amend the regulation to address the concerns  
27 raised during the additional review period, and then adopt the  
28 revised regulation. The regulation shall be treated as a newly  
29 adopted regulation, and shall go into effect in accordance with  
30 those procedures.

31 (C) Readopt the regulation as originally adopted or with those  
32 nonsubstantive, technical amendments deemed necessary to  
33 clarify the intent of the original regulation. This option cannot be  
34 exercised by the board of governors to overcome the disapproval  
35 of a regulation on the basis that it creates a new mandate that has  
36 not been funded. If the board of governors decides to readopt a  
37 regulation, with or without technical amendments, it shall also  
38 adopt a written declaration and determination regarding the  
39 specific state interests it has found necessary to protect by means  
40 of the specific language or requirements of the regulation. A



1 readopted regulation may then be challenged pursuant to existing  
2 law in a court of competent jurisdiction, and shall not be subject  
3 to any further appeal within the California Community Colleges.

4 (6) It is the intent of the Legislature to appropriate in the annual  
5 Budget Act funds for the purpose of offsetting net cumulative costs  
6 of regulations adopted by the board pursuant to this division. The  
7 board may consider the net cumulative cost or savings to local  
8 districts of regulations proposed in a fiscal year. As to any  
9 regulation that the board of governors determines would create a  
10 state-mandated local program cost, the board of governors shall  
11 not adopt the regulation until the Department of Finance has  
12 certified to the board of governors and to the Legislature that a  
13 source of funds is available to reimburse that cost.

14 (7) Pursuant to Section 6 of Article XIII B of the California  
15 Constitution, a subvention of funds need not be provided for the  
16 following mandates: (A) mandates requested by the local agency  
17 affected; or (B) mandates enacted prior to January 1, 1975, or  
18 executive orders or regulations initially implementing legislation  
19 enacted prior to January 1, 1975. Notwithstanding Chapter 4  
20 (commencing with Section 17550) of Part 7 of Division 4 of Title  
21 2 of the Government Code, the action of the board of governors  
22 regarding regulations adopted pursuant to this section or pursuant  
23 to these exceptions shall not be subject to review by the  
24 Commission on State Mandates. In exercising this responsibility,  
25 the board shall make its determinations in conformance with  
26 Section 17556 of the Government Code and in a manner consistent  
27 with the rules, standards, and precedential decisions of the  
28 Commission on State Mandates.

29 (8) Any district or other interested party may propose a new  
30 regulation or challenge any existing regulation.

31 (b) Except as expressly provided by this section, and except as  
32 provided by resolution of the board of governors, the provisions  
33 of Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code shall not apply to  
35 regulations adopted by the board of governors.

36 (c) This section shall become operative on January 1, 2010.

37 SEC. 4. Section 70902 of the Education Code is amended to  
38 read:

39 70902. (a) (1) Every community college district shall be  
40 under the control of a board of trustees, which is referred to herein

1 as the “governing board.” The governing board of each  
2 community college district shall establish, maintain, operate, and  
3 govern one or more community colleges in accordance with law.  
4 In so doing, the governing board may initiate and carry on any  
5 program, activity, or may otherwise act in any manner that is not  
6 in conflict with or inconsistent with, or preempted by, any law and  
7 that is not in conflict with the purposes for which community  
8 college districts are established.

9 (2) The governing board of each community college district  
10 shall establish rules and regulations not inconsistent with the  
11 regulations of the board of governors and the laws of this state for  
12 the government and operation of one or more community colleges  
13 in the district.

14 (b) In furtherance of the provisions of subdivision (a), the  
15 governing board of each community college district shall do all of  
16 the following:

17 (1) Establish policies for academic, operations, and facilities  
18 planning and management to promote orderly growth and  
19 development of the community colleges within the district.

20 (2) Establish policies for and approve courses of instruction  
21 and educational programs. The educational programs leading to  
22 certificates, degrees, or transfer readiness shall be submitted to the  
23 board of governors for approval.

24 (3) Establish academic standards, probation and dismissal and  
25 readmission policies, and graduation requirements not  
26 inconsistent with the minimum standards adopted by the board of  
27 governors.

28 (4) Employ and assign all personnel not inconsistent with the  
29 minimum standards adopted by the board of governors and  
30 establish employment practices, salaries, and benefits for all  
31 employees not inconsistent with the laws of this state.

32 (5) Adopt local district budgets, including the establishment of  
33 student fees as set by the board of governors as authorized by law.

34 (6) To the extent authorized by law, determine and control the  
35 district’s operational and capital outlay budgets. The district  
36 governing board shall determine the need for elections for override  
37 tax levies and bond measures and request that those elections be  
38 called.

39 (7) Oversee the procurement and management of the real and  
40 other property of the district.

~~(8) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.~~

~~(9) Establish rules and regulations governing student conduct.~~

~~(10) In its discretion, receive and administer gifts, grants, and scholarships.~~

~~(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.~~

~~(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.~~

~~(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.~~

~~(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.~~

~~(e) In carrying out the powers and duties specified in subdivision (b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.~~

~~(d) Wherever, in this section or in any other statute, a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.~~

~~SEC. 5.—~~

~~SECTION 1. Section 71090 of the Education Code is amended to read:~~

1 71090. (a) The board shall appoint and fix the compensation  
2 of a chief executive officer, to be known as the Chancellor of the  
3 California Community Colleges.

4 (b) The chancellor shall execute the duties and responsibilities  
5 as may be delegated to him or her by the board. Whenever in this  
6 code a power is vested in the board, the board, by a majority vote,  
7 may adopt a rule delegating that power to the chancellor or any  
8 officer, employee, or committee as the board may designate. The  
9 rule shall prescribe the limits of the delegation.

10 (c) It is the intent of the Legislature to enact legislation granting  
11 authority to the board of governors to appoint up to six deputy and  
12 vice chancellors if and when an amendment to Section 4 of Article  
13 VII of the California Constitution, authorizing these  
14 appointments, is adopted. Until that time, the Governor, with the  
15 recommendation of the board of governors, shall appoint up to six  
16 deputy and vice chancellors, who shall be exempt from state civil  
17 service. The appointments shall not exceed an aggregate total of  
18 six, for both the positions of deputy and vice chancellor.

19 ~~SEC. 6.—~~

20 *SEC. 2.* Section 71090.5 of the Education Code is repealed.

21 ~~SEC. 7.—Section 71092 of the Education Code is amended to~~  
22 ~~read:~~

23 ~~71092. (a) The Legislature finds and declares that the~~  
24 ~~California Community Colleges is a system of postsecondary~~  
25 ~~education characterized by a bilateral governance structure with a~~  
26 ~~state board and locally elected boards with defined~~  
27 ~~responsibilities.~~

28 ~~(b) It is the policy of the state to compensate employees of the~~  
29 ~~Board of Governors of the California Community Colleges at a~~  
30 ~~level comparable to the total compensation paid to community~~  
31 ~~college district employees performing approximately similar~~  
32 ~~functions. Pursuant to this policy, the board of governors shall~~  
33 ~~employ and fix the compensation, in accordance with law, of~~  
34 ~~assistants, clerical, and other employees, including the managerial~~  
35 ~~and professional employees that it appoints, as it deems necessary~~  
36 ~~for the effective conduct of the work of the board and the~~  
37 ~~chancellor's office. Pursuant to Section 19825 of the Government~~  
38 ~~Code, the Legislature hereby provides that the approval of the~~  
39 ~~Department of Personnel Administration is not required.~~

1     ~~(c) Pursuant to Section 19818.14 of the Government Code, the~~  
2     ~~Department of Personnel Administration shall designate the board~~  
3     ~~of governors to allocate positions to the Personnel Classification~~  
4     ~~Plan in accordance with Section 19818.6 of the Government Code.~~  
5     ~~(d) Notwithstanding Section 19849.5 of the Government Code,~~  
6     ~~the Board of Governors of the California Community Colleges~~  
7     ~~shall designate the headquarters for each of its employees, except~~  
8     ~~as provided in Section 71004.~~

